

**AMENDMENTS TO THE DRAWINGS**

The attached sheet of drawings includes new FIG. 4.

Attachment: Replacement Sheet

**REMARKS**

Claims 1-18 are pending in the current application. Claims 1 and 18 are independent claims.

**Allowable Subject Matter**

Initially, Applicant appreciates the Examiner's indication that claims 3-13 and 15 would be allowable if rewritten in independent form. In view of the present amendments and remarks, Applicant respectfully submits that all claims are allowable in their present form.

**Drawing Objections**

The drawings stand objected to under 37 C.F.R. § 1.83(a) for not illustrating that the "housing is adapted to be placed at a position behind the ear with a controlling means" as recited in claim 2. Applicant directs the Examiner to Fig. 4, which has been added by this Amendment and which illustrates this feature. Support for Fig. 4 may be found in the specification on page 9, lines 1-7 and within the recital of original claim 2.

The Examiner also objects to the drawings as not illustrating a "microphone/telecoil controlled by the controlling means of claim 16" (page 2 of the Office Action). Applicant respectfully traverses this drawing requirement because the Examiner is mischaracterizing the language of the claims.

Claim 16 recites "wherein the controlling means are adapted to control a telecoil/microphone operation mode of the hearing aid". Both the hearing aid and controlling means are illustrated in the figures. The claimed "telecoil/microphone operation mode" is not a different structural element, but rather is descriptive claim language further clarifying the controlling means. The controlling means is "adapted to control ..." a claimed element. The adaptation of the controlling means, however, limits the controlling means, and not the element for which it is adapted, and accordingly an illustration of such an element is not required under 37 C.F.R. 1.83(a).

The drawings stand further objected for failing to comply with 37 C.F.R. § 1.84(p)(5) for failing to mention element 40 in the figures (page 3 of the Office Action). Applicant respectfully traverses this drawing objection.

Applicant directs the Examiner to page 9 of the specification which recites “Fig. 3 shows a CIC type of hearing aid 35 mounted in an ear canal 40 of a hearing aid user” (page 9, lines 27-29 of the specification). Accordingly, Applicant respectfully submits that the ear canal 40 is properly referenced in the specification and therefore this drawing objection is improper.

Applicant respectfully requests that all drawing objections be withdrawn in view of the specification and drawing amendments and the above remarks.

35 U.S.C. § 102(b) – Ito

Claims 1 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ito. Applicant respectively traverses this art grounds of rejection.

Ito is directed to a wireless headphone with a spring biased activating power switch. The Examiner is reading the spring biasing force of Ito (i.e., a spring within the headphone itself) as the “force”. The spring biasing force of Ito is not “applied by a hearing aid user’s finger” as recited in presently amended independent claim 1, but rather is a spring force which is characteristic of the headphone. Accordingly, Applicant respectfully submits that Ito cannot disclose or suggest “means for controlling an operation mode of the hearing aid, wherein said controlling means are adapted to be responsive to a force applied by a hearing aid user’s finger to a part of the user’s auricle” as recited in independent claim 1.

As such, claim 14, dependent upon independent claim 1, is likewise allowable over Ito for at least the reasons given above with respect to independent claim 1.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

35 U.S.C. § 102(b) – Van Vroenhoven

Claim 18 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Van Vroenhoven. Applicant respectfully traverses this art grounds of rejection.

Van Vroenhoven is directed to a hearing aid intended for being mounted within an ear canal. The hearing aid of Van Vroenhoven is configured such that no portion of the hearing aid can be reoriented without reorienting the whole hearing aid. While the hearing aid itself may be repositioned

within the ear at different orientations relative to the ear itself, it is clear that it is the entirety of the hearing aid that is being reoriented.

Applicant directs the Examiner to amendments presently made to independent claim 18. In view of the disclosure of Van Vroenhoven, Applicant respectfully submits that Van Vroenhoven cannot disclose or suggest “a stiff member adapted to remain in essentially the same predetermined position at least during normal deflection of said stiff member relative to the housing” as recited in independent claim 18 (Emphasis added). The hearing aid of Van Vroenhoven is clearly not deflectable relative to the housing, nor is it obvious to modify the extraction member of Van Vroenhoven to become deflectable because the extraction member is arranged for optical IR guiding, not mechanical switching.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

35 U.S.C. § 103(a) – Ito

Claims 2 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ito. Applicant respectfully traverses this art grounds of rejection.

Initially, Applicant agrees with the Examiner in that Ito “does not teach the housing is adapted to be placed at a position behind the ear” (page 5 of the Office Action) and “Ito does not specifically teach[es] that the circuitry comprises an integrated circuit” (page 6 of the Office Action). The Examiner alleges that such features are obvious in view of what is well-known in the art. However, Applicant has already discussed how Ito includes additional deficiencies in disclosing or suggesting the features of independent claim 1. Accordingly, claims 2 and 17, dependent upon independent claim 1, are likewise allowable over Ito for at least the reasons given above with respect to independent claim 1.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

35 U.S.C. § 103(a) – Ito, Schmidt

Claim 16 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ito in view of Schmidt. Applicant respectfully traverses this art grounds of rejection.

As discussed above, Ito is insufficient to disclose or suggest the features presently recited in independent claim 1. A cursory review of Schmidt indicates that Schmidt is insufficient to overcome the deficiencies of Ito with respect to independent claim 1. Accordingly, claim 16, dependent upon independent claim 1, is likewise allowable over Ito and Schmidt for at least the reasons given above with respect to independent claim 1.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection.

Reconsideration and issuance of the present application is respectfully requested.

### CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-18 in connection with the present application is earnestly solicited.

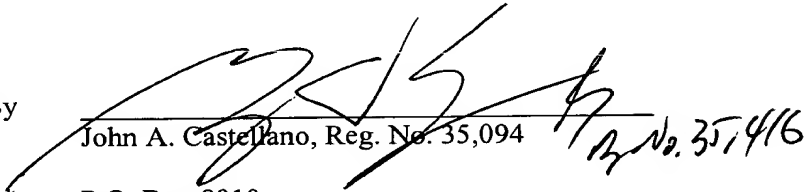
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John A. Castellano at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By

  
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